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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 12th January, 1976:—

BILL No. 11 OF 1976

A Bill further to amend the Unit Trust of India Act, 1963.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Unit Trust of India (Amendment) Act, 1976. Short title.

52 of 1963. 2. In section 32 of the Unit Trust of India Act, 1963 (hereinafter referred to as the principal Act),— Amendment of section 32.

(*A*) in sub-section (*1*),—

(*i*) after clause (*a*), the following clause shall be inserted, namely:—

'(*aa*) in the case of an assessee who is not resident in India, being,—

(*i*) an individual who is an Indian or a person of Indian origin, or

(*ii*) a Hindu undivided family,

there shall not be included in the total income of such assessee, for the purposes of the Income-tax Act, 1961, any income received by such assessee in the previous year in respect of units acquired by such assessee from the Trust,

43 of 1961.

out of funds in a Non-resident (External) Account maintained with any bank in India or by the remittance of funds in foreign exchange, in accordance, in either case, with the provisions of the Foreign Exchange Regulation Act, 1973, or any rules or orders made thereunder;'; 46 of 1973.

(*ii*) the *Explanation* to clause (*b*) shall be omitted;

(*iii*) in clause (*ba*), after the words "assets in the form of units", the brackets and words "[not being assets referred to in clause (*bb*)]" shall be inserted;

(*iv*) the *Explanation* to clause (*ba*) shall be omitted;

(*v*) after clause (*ba*), the following clause shall be inserted, namely:—

"(*bb*) in the case of an assessee who is not resident in India, being, an individual who is an Indian or a person of Indian origin, or a Hindu undivided family, wealth-tax shall not be payable by the assessee in respect of, and there shall not be included in, the net wealth of the assessee computed under the Wealth-tax Act, 1957, the value of the assets in the form of unit acquired from the Trust, out of funds in a Non-resident (External) Account maintained with any bank in India or by the remittance of funds in foreign exchange, in accordance, in either case, with the provisions of the Foreign Exchange Regulation Act, 1973, or any rules or orders made thereunder;"; 27 of 1957. 46 of 1973.

(*vi*) after clause (*c*), the following *Explanations* shall be inserted, namely:—

'*Explanation I.*—In this sub-section,—

(*a*) in clauses (*aa*) and (*b*), the expressions "previous year" and "total income" shall have the meanings, respectively, assigned to them in the Income-tax Act, 1961; 43 of 1961.

(*b*) in clauses (*ba*) and (*bb*), the expressions "assessee" and "net wealth" shall have the meanings, respectively, assigned to them in the Wealth-tax Act, 1957. 27 of 1957.

Explanation II.—For the purposes of sub-sections (*1*) and (*2*),—

(*a*) an assessee shall be deemed to be "not resident in India" if he is a non-resident within the meaning of clause (30) of section 2 of the Income-tax Act, 1961; 43 of 1961.

(*b*) a person shall be deemed to be a person of Indian origin if he or either of his parents or any of his grand parents howsoever high in degree of ascent, whether on the paternal side or on the maternal side, was born in India, as defined in the Government of India Act, 1935, as originally enacted.';

(*B*) in sub-section (*2*), to clause (*c*), the following proviso shall be added, namely:—

"Provided that no deduction of income-tax shall be made by the Trust, where the units in respect of which income is distributed to—

(*i*) an individual who is an Indian or a person of Indian origin, or

(*ii*) a Hindu undivided family,

not resident in India, have been acquired from the Trust, out of funds in a Non-resident (External) Account maintained with any bank in India or by the remittance of funds in foreign exchange, in accordance, in either case, with the provisions of the Foreign Exchange Regulation Act, 1973, or any rules or orders made thereunder.".

46 of 1973.

18 of 1975.

3. (*1*) The Unit Trust of India (Amendment) Ordinance, 1975, is hereby repealed. Repeal and saving.

(*2*) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act, as if this Act had come into force on the 31st day of October, 1975.

STATEMENT OF OBJECTS AND REASONS

Government have recently been examining various suggestions to mobilise the savings of non-resident Indians and aliens of Indian origin living abroad and to facilitate investment by them in India. At present, investments made by non-resident Indians and aliens of Indian origin in fixed deposits with Commercial Banks out of the Non-Resident (External) Accounts are totally exempt from payment of Income Tax and Wealth Tax. In order to make the investments in units of the Unit Trust of India also attractive and to encourage the flow of foreign exchange into the country, the President promulgated the Unit Trust of India (Amendment) Ordinance, 1975 on 31st October, 1975 amending the Unit Trust of India Act, 1963.

2. The Ordinance provides that the income earned from units of the Unit Trust of India purchased by non-resident Indians and aliens of Indian origin from Non-Resident (External) Accounts or through remittance of foreign exchange will be free of income tax. The Ordinance further provides that investments in units by the above mentioned persons, either from Non-Resident (External) Accounts or through remittance of foreign exchange, will also be free of wealth tax.

3. The present Bill seeks to replace the said Ordinance.

NEW DELHI;
The 30th December, 1975. SUSHILA ROHATGI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 2/17/75-CCI (INV)-21, dated the 2nd January, 1976 from Shrimati Sushila Rohatgi, Deputy Minister in the Ministry of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the Bill further to amend the Unit Trust of India Act, 1963, has recommended under article 117(1) and 274(1) of the Constitution, the introduction of the Bill in Lok Sabha.

BILL NO. 12 OF 1976

A Bill to provide for voluntary disclosure of income and wealth and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Voluntary Disclosure of Income and Wealth Act, 1976.

(*2*) It extends to the whole of India.

(*3*) It shall be deemed to have come into force on the 8th day of October, 1975.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) (*i*) "Gold (Control) Act" means the Gold (Control) Act, 1968; 45 of 1968.

(*ii*) "Income-tax Act" means the Income-tax Act, 1961; 43 of 1961.

(*iii*) "Wealth-tax Act" means the Wealth-tax Act, 1957; 27 of 1957.

(*b*) all other words and expressions used in this Act but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

Charge of income-tax on voluntarily disclosed income.

3. (*1*) Subject to the provisions of this Act, where any person makes, on or after the date of commencement of this Act but before the 1st day of January, 1976, a declaration in accordance with the provisions of section 4 in respect of any income chargeable to tax under the Indian Income-tax Act, 1922 or the Income-tax Act for any assessment year— 11 of 1922.

(*a*) for which he has failed to furnish a return under section 139 of the Income-tax Act, or

(*b*) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act, or

(*c*) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Indian Income-tax Act, 1922 or the Income-tax Act or to disclose fully and truly all material facts necessary for his assessment or otherwise, 11 of 1922.

then, notwithstanding anything contained in the Indian Income-tax Act, 1922 or the Income-tax Act or in any Finance Act, income-tax shall be charged in respect of the income so declared (such income being hereinafter referred to as the voluntarily disclosed income) at the rate or rates specified in the Schedule. 11 of 1922.

(*2*) Nothing contained in sub-section (*1*) shall apply in relation to—

(*i*) the income assessable for any assessment year for which a notice under section 139 or section 148 of the Income-tax Act has been served upon such person and the return has not been furnished before the commencement of this Act;

(*ii*) where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to the person making the declaration under sub-section (*1*) (hereafter in this section, in sections 4 to 13 and in the Schedule referred to as the declarant) have been seized as a result of any search under section 132 of the Income-tax Act or under section 37A of the Wealth-tax Act, the income in respect of the previous year in which such search was made or any earlier previous year.

(*3*) In addition to the amount of income-tax to be paid under sub-section (*1*), the declarant shall invest a sum equal to five per cent. of the amount of the voluntarily disclosed income in such securities as the Central Government may notify in this behalf in the Official Gazette.

Particulars to be furnished in declaration.

4. (*1*) The declaration under sub-section (*1*) of section 3 shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board.

(*2*) The declaration shall be signed—

(*a*) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(*b*) where the declarant is a Hindu undivided family, by the *karta*, and where the *karta* is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(*c*) where the declarant is a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof;

(*d*) where the declarant is a firm, by the managing partner thereof, or where for any unavoidable reason such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor;

(*e*) where the declarant is any other association, by any member of the association or the principal officer thereof; and

(*f*) where the declarant is any other person, by that person or by some person competent to act on his behalf.

(*3*) Any person, who has made a declaration under sub-section (*1*) of section 3 in respect of his income, or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration under that sub-section in respect of his income or, as the case may be, the income of such other person, and any such other declaration, if made, shall be deemed to be void.

Time for payment of income-tax and for investment in notified securities.

5. (*1*) Subject to the provisions of sub-section (*2*), the income-tax payable under this Act in respect of the voluntarily disclosed income shall be paid by the declarant before making the declaration and the declaration shall be accompanied by proof of payment of such tax.

(*2*) If the Commissioner is satisfied, on an application made in this behalf by the declarant, that the declarant is unable, for good and sufficient reasons, to pay the full amount of income-tax in respect of the voluntarily disclosed income in accordance with sub-section (*1*), he may extend the time for payment of the amount which remains unpaid or allow payment thereof by instalments if the declarant furnishes adequate security for the payment thereof; so, however, that an amount which is not less than one-half of the amount of income-tax payable in respect of the voluntarily disclosed income shall be paid on or before the 31st day of March, 1976 and the remainder, if any, on or before the 31st day of March, 1977.

(*3*) The security required to be furnished by a declarant for the purposes of sub-section (*2*) shall be in such form and in such manner as the Commissioner may, in his discretion, direct.

(*4*) The investment in the securities referred to in sub-section (*3*) of section 3 shall be made by the declarant within thirty days from the date on which the declaration is made by him under sub-section (*1*) of that section.

Interest payable by declarant.

6. If the amount of income-tax payable in respect of the voluntarily disclosed income is not paid on or before the 31st day of March, 1976, the declarant shall be liable to pay simple interest at twelve per cent. per annum on the amount remaining unpaid from the 1st day of April, 1976 to the date of payment and the provisions of the Income-tax Act and the rules made thereunder shall, so far as may be, apply as if the

interest payable under this section were interest payable under sub-section (2) of section 220 of that Act.

Mode of recovery.

7. (1) If the declarant fails to pay the income-tax in respect of the voluntarily disclosed income within the time allowed under sub-section (2) of section 5 or to invest the amount required to be invested in the securities referred to in sub-section (3) of section 3 within the time specified in sub-section (4) of section 5, the declarant shall be deemed to be in default.

(2) The provisions contained in sections 221 to 227, 229, 231 and 232 of the Income-tax Act and the Second and Third Schedules to that Act and any rules made thereunder shall, so far as may be, apply as if the said provisions were provisions of this Act and referred to income-tax and sums payable by way of penalty and interest under this Act instead of to tax and sums by way of penalty and interest payable under that Act and to the declarant instead of to the assessee.

(3) Any arrears in respect of the amount required to be invested by the declarant in the securities referred to in sub-section (3) of section 3 shall be recoverable in accordance with the provisions of sub-section (2) as if such arrears were arrears of income-tax and the amount so recovered shall be utilised for the purchase of such securities in the name of the declarant.

Voluntarily disclosed income not to be included in the total income.

8. (1) The amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Indian Income-tax Act, 1922 or the Income-tax Act, or the Excess Profits Tax Act, 1940 or the Business Profits Tax Act, 1947 or the Super Profits Tax Act, 1963 or the Companies (Profits) Surtax Act, 1964, if the following conditions are fulfilled, namely:— 11 of 1922. 15 of 1940. 21 of 1947. 14 of 1963. 7 of 1964.

(i) the declarant credits such amount in the books of account, if any, maintained by him for any source of income or in any other record, and intimates the credit so made to the Income-tax Officer;

(ii) the income-tax in respect of the voluntarily disclosed income is paid by the declarant; and

(iii) the amount required to be invested in the securities referred to in sub-section (3) of section 3 is so invested by the declarant.

(2) The Commissioner shall, on an application made by the declarant, grant a certificate to him setting forth the particulars of the voluntarily disclosed income, the amount of income-tax paid in respect of the same, the amount of investment made in the securities referred to in sub-section (3) of section 3 and the date of payment and investment.

Voluntarily disclosed income not to affect finality of completed assessments, etc.

9. The declarant shall not be entitled, in respect of the voluntarily disclosed income or any amount of income-tax paid thereon, to reopen any assessment or reassessment made under any of the Acts mentioned in sub-section (1) of section 8 or claim any set off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

Income-tax in respect of voluntarily disclosed income not refundable.

10. Any amount of income-tax paid in pursuance of a declaration made under sub-section (*1*) of section 3 shall not be refundable under any circumstances.

Declaration not admissible in evidence against declarant.

11. Notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under sub-section (*1*) of section 3 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purposes of prosecution under any of the Acts mentioned in sub-section (*1*) of section 8 or the Wealth-tax Act.

Secrecy of declaration.

12. (*1*) All particulars contained in a declaration made under sub-section (*1*) of section 3 shall be treated as confidential and, notwithstanding anything contained in any law for the time being in force, no court or any other authority shall be entitled to require any public servant or the declarant to produce before it any such declaration or any part thereof or to give any evidence before it in respect thereof.

(*2*) No public servant shall disclose any particulars contained in any such declaration except to any officer employed in the execution of any of the Acts mentioned in sub-section (*1*) of section 8, or the Wealth-tax Act, or to any officer appointed by the Comptroller and Auditor-General of India or the Board to audit income-tax receipts or refunds.

(*3*) The provisions of sub-sections (*1*) and (*2*) shall apply in relation to all documents and particulars relating to the investment in the securities referred to in sub-section (*3*) of section 3 (including the payment of interest on such securities) as they apply in relation to the declaration made under sub-section (*1*) of that section and the particulars contained therein.

Exemption from wealth-tax in respect of assets specified in declaration.

13. (*1*) Where the voluntarily disclosed income is represented by cash (including bank deposits), bullion, investment in shares, debts due from other persons, commodities or any other assets specified in the declaration made under sub-section (*1*) of section 3—

(*a*) in respect of which the declarant has failed to furnish a return under section 14 of the Wealth-tax Act for the assessment year commencing on the 1st day of April, 1975 or any earlier assessment year or years, or

(*b*) which have not been shown in the return of net wealth furnished by him for the said assessment year or years, or

(*c*) which have been understated in value in the return of net wealth furnished by him for the said assessment year or years,

then, notwithstanding anything contained in the Wealth-tax Act or any rules made thereunder,—

(*i*) wealth-tax shall not be payable by the declarant in respect of the assets referred to in clause (*a*) or clause (*b*) and such assets

shall not be included in his net wealth for the said assessment year or years;

(*ii*) the amount by which the value of the assets referred to in clause (*c*) has been understated in the return of net wealth for the said assessment year or years, to the extent such amount does not exceed the voluntarily disclosed income utilised for acquiring such assets, shall not be taken into account in computing the net wealth of the declarant for the said assessment year or years.

Explanation.—Where a declaration under sub-section (*1*) of section 3 is made by a firm, the assets referred to in clause (*i*) or, as the case may be, the amount referred to in clause (*ii*) shall not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm.

(*2*) The provisions of sub-section (*1*) shall not apply unless the conditions specified in sub-section (*1*) of section 8 are fulfilled by the declarant.

(*3*) All words and expressions used in this section and in section 15 but not defined and defined in the Wealth-tax Act shall have the meanings respectively assigned to them in that Act.

Disclosure of income in cases of search and seizure.

14. (*1*) Subject to the provisions of this section, where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to a person have been seized as a result of a search under section 132 of the Income-tax Act or section 37A of the Wealth-tax Act and such person (hereafter in this section referred to as the declarant) makes, on or after the date of commencement of this Act but before the 1st day of January, 1976, a declaration in accordance with sub-section (*2*) in respect of any income relating to the previous year in which such search was made or any earlier previous year—

(*a*) for which he has failed to furnish a return under section 139 of the Income-tax Act, or

(*b*) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the commencement of this Act, or

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Indian Income-tax Act, 1922, or the Income-tax Act, or to disclose fully and truly all material facts necessary for his assessment or otherwise, 11 of 1922.

then, notwithstanding anything contained in any of the Acts mentioned in sub-section (*1*) of section 8 or the Wealth-tax Act, the amount of income so declared or, as the case may be, the value of the assets representing such income, shall not be taken into account for the purposes of—

(*i*) payment of interest by the declarant under sub-section (*8*) of section 139 of the Income-tax Act;

(*ii*) payment of interest by the declarant under section 215 or section 217 of the Income-tax Act or the corresponding provisions of the Indian Income-tax Act, 1922; 11 of 1922.

(*iii*) imposition of penalty on the declarant under the provisions of any of the said Acts, except under section 221 of the Income-tax Act or the corresponding provisions of any of the other said Acts; and

(*iv*) prosecution of the declarant under the provisions of any of the said Acts.

(*2*) The declaration under sub-section (*1*) shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board.

(*3*) A declaration under this section shall be signed by the person specified in sub-section (*2*) of section 4 as if the declaration had been made under that section.

(*4*) A copy of the declaration made by the declarant under sub-section (*1*) shall be forwarded by the Commissioner to the Income-tax Officer and the information contained therein may be taken into account for the purposes of the proceedings relating to assessment or reassessment of the income of the declarant under the provisions of any of the Acts mentioned in sub-section (*1*) of section 8 or the Wealth-tax Act.

(*5*) The immunity provided under sub-section (*1*) shall not be available to the declarant unless the tax chargeable in respect of the income of the previous year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of section 5.

Explanation.—For the purposes of this sub-section, tax chargeable in respect of the income of any previous year for which the declaration is made shall be,—

(*a*) where the declarant has not furnished a return in respect of the total income of that year and no assessment has been made in respect of the total income of that year, the tax payable on the income declared under sub-section (*1*) for that year as if such income were the total income;

(*b*) where the declarant has furnished a return in respect of the total income of that year and no assessment has been made in pursuance of such return, the tax payable on the aggregate of the total income returned and the income declared under sub-section (*1*) for that year as if such aggregate were the total income, as reduced by the tax payable on the basis of the total income returned; and

(*c*) where an assessment in respect of the total income of that year has been made, the tax payable on the aggregate of the total income as assessed and the income declared under sub-section (*1*) for that year as if such aggregate were the total income, as reduced by the tax payable on the basis of the total income as assessed.

(*6*) Where any tax is paid by the declarant in accordance with the provisions of section 5, read with sub-section (*5*) of this section, credit therefor shall be given to the declarant in the assessment made under the Indian Income-tax Act, 1922, or, as the case may be, the Income-tax Act, in respect of his total income of the previous year or years.

11 of 1922.

(7) Nothing in sub-section (*1*) shall apply in relation to any income which has been included in the total income of the declarant in any assessment made by the Income-tax Officer before the date on which the declaration under that sub-section is made.

Voluntary disclosure of wealth.

15. (*1*) Subject to the provisions of this section, where any person makes, on or after the date of commencement of this Act but before the 1st day of January, 1976, a declaration in respect of—

(*a*) the net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return under section 14 of the Wealth-tax Act; or

(*b*) the value of the assets which has not been disclosed, or the value of the assets which has been understated, in any return of net wealth for any assessment year,

then, notwithstanding anything contained in that Act, the net wealth, or, as the case may be, the value so declared shall not be taken into account for the purposes of any proceedings relating to imposition of penalty on the person making the declaration under this sub-section (hereafter in this section referred to as the declarant) or for the purposes of the prosecution of the declarant under that Act:

Provided that—

(*i*) nothing contained in clause (*a*) shall apply in relation to the net wealth assessable for any assessment year for which a notice under section 14 or section 17 of that Act has been served upon the declarant before the commencement of this Act;

(*ii*) nothing contained in clause (*b*) shall apply in relation to so much of the value of such assets as has been assessed in any assessment for the relevant assessment year made by the Wealth-tax Officer before the date on which the declaration under this sub-section is made.

(2) The declaration under sub-section (*1*) shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board.

(3) A declaration under sub-section (*1*) shall be signed by the person specified in sub-section (2) of section 4 as if the declaration had been made under that section.

(4) A copy of the declaration made by the declarant under sub-section (*1*) shall be forwarded by the Commissioner to the Wealth-tax Officer and the information contained therein may be taken into account for the purposes of the proceedings relating to assessment or reassessment of the net wealth of the declarant under the provisions of the Wealth-tax Act.

(5) The immunity provided under sub-section (*1*) shall not be available to the declarant unless the wealth-tax chargeable in respect of the net wealth for the assessment year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of section 5 and the declarant invests in the securities referred to in

sub-section (3) of section 3 within the time specified in sub-section (4) of section 5 the sum specified in sub-section (6) of this section.

Explanation.—For the purposes of this sub-section, wealth-tax chargeable in respect of the net wealth for any assessment year for which the declaration is made shall be—

(a) in a case falling under clause (a) of sub-section (1), the wealth-tax payable in respect of the net wealth declared under that clause for that year;

(b) in a case falling under clause (b) of sub-section (1),—

(i) where no assessment has been made in pursuance of the return of net wealth furnished by the declarant, the wealth-tax payable on the aggregate of the net wealth returned and the value declared under that clause for that year as if such aggregate were the net wealth, as reduced by the wealth-tax payable on the basis of the net wealth returned;

(ii) where an assessment has been made in pursuance of the return of net wealth furnished by the declarant, the wealth-tax payable on the aggregate of the net wealth as assessed and the value declared under that clause for that year as if such aggregate were the net wealth, as reduced by the wealth-tax payable on the net wealth as assessed.

(6) The sum referred to in sub-section (5) shall be,—

(a) where the declaration has been made in respect of one assessment year, a sum equal to two and a half per cent. of the amount of net wealth declared under clause (a) of sub-section (1), or, as the case may be, the value declared under clause (b) of that sub-section;

(b) where the declaration has been made in respect of more than one assessment year, a sum equal to two and a half per cent. of the net wealth declared under clause (a) of sub-section (1), or, as the case may be, the value declared under clause (b) of that sub-section, in respect of the last of such assessment years.

(7) Where any wealth-tax is paid by the declarant for any assessment year in accordance with the provisions of section 5, read with sub-section (5) of this section, credit therefor shall be given to the declarant in the assessment made under the Wealth-tax Act for that year.

Immunity from penalty, prosecution, etc., under certain Acts.

16. (1) Where—

(a) the voluntarily disclosed income declared under sub-section (1) of section 3 or any part thereof, or

(b) the net wealth, or the assets the value whereof is, declared under sub-section (1) of section 15 or any part of such net wealth or assets,

is or are represented by gold, then, notwithstanding anything contained in the Customs Act, 1962 or the Gold (Control) Act, such gold shall not be liable to confiscation under either of the said Acts and the person making the declaration shall not be liable to imposition of any penalty

52 of 1962.

or infliction of any punishment under either of the said Acts for any act or omission in relation to such gold, if he fulfils the following conditions, namely:—

(*A*) in a case where the gold is owned, possessed, held or controlled by the person making the declaration (such gold being owned, possessed, held or controlled by him in his capacity as a licensed dealer), necessary entries are made by him in the accounts, registers and documents maintained under the Gold (Control) Act, under intimation to the Gold Control Officer of the rank of an Assistant Collector of Central Excise or of Customs before the 1st day of February, 1976 and such other steps as are necessary for him to comply with the requirements of that Act in relation to such gold are taken by him before that date;

(*B*) in any other case,—

(*i*) where the gold is an article or ornament or both and the weight of such article or ornament, or the aggregate weight of both, together with the weight of any other gold (being an article or ornament) owned, possessed, held or controlled by him, exceeds the limits specified in sub-section (5) of section 16 of the Gold (Control) Act, such article or ornament or both, as the case may be, is or are declared in the form prescribed under sub-section (*1*), and in the manner specified in sub-section (*8*), of that section before the 1st day of February, 1976;

(*ii*) where the gold is primary gold, such gold is either sold to any licensed dealer under intimation to the Gold Control Officer of the rank of an Assistant Collector of Central Excise or of Customs before the 1st day of February, 1976 or is made into ornaments and a declaration in this behalf is made in the form prescribed under sub-section (*1*), and in the manner specified in sub-section (*8*), of section 16 of the Gold (Control) Act, before that date.

(*2*) Notwithstanding anything contained in the Gold (Control) Act, any primary gold referred to in sub-clause (*ii*) of clause (*B*) of sub-section (*1*) may be sold by the person making the declaration to any licensed dealer and such licensed dealer may purchase such gold, provided that the total quantity of primary gold (not being in the form of standard gold bars) in the possession or custody of such dealer and the quantity of primary gold (not being in the form of standard gold bars) to be so purchased does not exceed the limit specified in clause (*a*) or clause (*b*) or clause (c) or, as the case may be, clause (*d*) of the proviso to sub-section (*1*) of section 32 of that Act.

(*3*) Where a declaration is made under sub-clause (*i*) or sub-clause (*ii*) of clause (*B*) of sub-section (*1*), the provisions of section 16 of the Gold (Control) Act, shall, so far as may be, apply as if such declaration were a declaration made under that section.

(*4*) The immunity provided under sub-section (*1*) shall, in a case where the person making the declaration is a firm, also extend to the partners of the firm.

(5) Nothing in this section shall apply in relation to any gold,—

52 of 1962.

(a) which has been seized or confiscated under the Customs Act, 1962 or the Gold (Control) Act, before the declaration under sub-section (1) of section 3 or, as the case may be, under sub-section (1) of section 15, is made; or

(b) which is seized as a result of any search made under either of the said Acts where such search had commenced before such declaration is made; or

(c) in respect of which any other proceedings under either of the said Acts are pending before any authority before such declaration is made.

(6) For the removal of doubts, it is hereby declared that nothing in this section shall be construed as exempting any person from discharging any obligation under the Gold (Control) Act, on or after the 1st day of February, 1976 in relation to the gold referred to in this section.

Explanation.—For the purposes of this section, the expressions "article", "gold", "Gold Control Officer", "licensed dealer", "ornament", "primary gold" and "standard gold bar" shall have the meanings respectively assigned to them in the Gold (Control) Act.

Applicability of certain provisions of Income-tax Act and of Chapter V of Wealth-tax Act.

17. The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 189 of that Act or of Chapter V of the Wealth-tax Act relating to liability to assessment in special cases shall, so far as may be, apply in relation to proceedings under this Act as they apply in relation to proceedings under the Income-tax Act or, as the case may be, the Wealth-tax Act.

Removal of doubts.

18. For the removal of doubts, it is hereby declared that, save as otherwise expressly provided in the *Explanation* to sub-section (1) of section 13 and in sub-section (4) of section 16, nothing contained in this Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Act.

Power to remove difficulties.

19. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

20. (1) The Board may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the form in which a declaration may be made under sub-section (1) of section 3 and the manner in which it may be varified;

(b) the form in which a declaration may be made under sub-section (1) of section 14 and the manner in which it may be verified;

(c) the form in which a declaration may be made under sub-section (1) of section 15 and the manner in which it may be verified;

(3) The Central Government shall cause every rule made under this Act to be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Provisions of Act not to apply to certain persons.

21. The provisions of this Act shall not apply to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: 52 of 1974.

Provided that—

(*i*) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(*ii*) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (3) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (2) of section 9, of the said Act; or

(*iii*) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (6) of section 12A, of the said Act; or

(*iv*) such order of detention has not been set aside by a court of competent jurisdiction.

Repeal and saving.

22. (1) The Voluntary Disclosure of Income and Wealth Ordinance, 1975 and the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975 are hereby repealed. 15 of 1975. 23 of 1975.

(2) Notwithstanding such repeal, anything done or any action taken under the Voluntary Disclosure of Income and Wealth Ordinance, 1975 as amended by the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975 shall be deemed to have been done or taken under the corresponding provision of this Act. 15 of 1975. 23 of 1975.

(3) Where during the period commencing on the 8th October, 1975 and ending with the 28th November, 1975 any person had furnished security in accordance with sub-section (3) of section 5 of the Voluntary Disclosure of Income and Wealth Ordinance, 1975 as it stood immediately before its amendment by the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975, such person shall be deemed to have furnished adequate security for the purposes of sub-section (2) of section 5 of this Act. 15 of 1975. 23 of 1975.

THE SCHEDULE

[*See* section 3(*1*)]

Rates of income-tax

(*a*) In the case of a declarant, being a company, at the rate of 60 per cent. of the voluntarily disclosed income.

(*b*) In the case of a declarant, being a person other than a company,—

(1) where the voluntarily disclosed income does not exceed Rs. 25,000	25 per cent. of the voluntarily disclosed income;
(2) where the voluntarily disclosed income exceeds Rs. 25,000 but does not exceed Rs. 50,000	Rs. 6,250 *plus* 40 per cent. of the amount by which the voluntarily disclosed income exceeds Rs. 25,000;
(3) where the voluntarily disclosed income exceeds Rs. 50,000	Rs. 16,250 *plus* 60 per cent. of the amount by which the voluntarily disclosed income exceeds Rs. 50,000.

STATEMENT OF OBJECTS AND REASONS

The President promulgated the Voluntary Disclosure of Income and Wealth Ordinance, 1975 on October 8, 1975 to provide for voluntary disclosure of income and wealth and for matters connected therewith or incidental thereto. The scheme of voluntary disclosure cotained in the Ordinance offered an opportunity to persons who had evaded tax in the past to declare their undisclosed income and wealth, pay tax therebn on a reasonable basis and return to the path of civil responsibility in future. The operation of the scheme is restricted to declarations made during the period from 8th October, 1795 to 31st December, 1975. In order to enable persons to disclose their concealed income or wealth represented by gold and articles or ornaments made of gold and with a view to removing certain practical difficulties experienced in the operation of the scheme of voluntary disclosure contained in the Ordinance of October 8, 1975, the President promulgated on November 29, 1975 another Ordinance, namely, the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975.

2. The Bill seeks to replace the Voluntary Disclosure of Income and Wealth Ordinance, 1975, as amended by the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975.

3. The Notes on clauses appended to the Bill explain in detail the various provisions thereof.

NEW DELHI;
The 28th December, 1975. PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Extract from letter No. F. No. 132 (6)/75-TPL, dated the 3rd January, 1976 from Shri Pranab Kumar Mukherjee, Minister of State in charge of the Department of Revenue and Banking to the Secretary-General, Lok Sabha.]

* * * *

The President, having been informed of the subject matter of the proposed Bill, has recommended under article 117(1) and article 274(1) of the Constitution, the introduction of the Bill in Lok Sabha.

Notes on clauses

Clause 2 contains definitions of certin terms and expressions used in the Bill.

Clause 3 provides for charge of income-tax on the income declared by a person under this clause.

Sub-clause (1) provides that any person may make a declaration on or after the 8th October, 1975 but before the 1st January, 1976 in respect of any income chargeable to tax under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 for any assessment year up to and including the assessment year 1975-76 (a) for which he has failed to furnish a return under section 139 of the Income-tax Act, 1961; or (b) which he has failed to disclose in a return of income furnished by him under that Act before the 8th October, 1975; or (c) which has escaped assessment by reason of his omission or failure to make a return under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 or to disclose fully and truly all material facts necessary for his assessment or otherwise. The income so declared (hereinafter referred to as the voluntarily disclosed income) will be charged to tax at the rate or rates specified in the Schedule to the Bill.

Sub-clause (2) provides that a declaration under sub-clause (1) cannot be made in relation to (i) the income assessable for any assessment year for which a notice under section 139 or section 148 of the Income-tax Act, 1961 calling for a return of income has been served upon the person making the declaration (hereinafter referred to as the declarant) and the return has not been furnished before 8th October, 1975; and (ii) where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to the declarant have been seized as a result of any search under the Income-tax Act, 1961 or the Wealth-tax Act, 1957, the income in respect of the previous year in which such search was made or any earlier previous year.

Sub-clause (3) provides that, in addition to the amount of income-tax payable on the voluntarily disclosed income at the rate or rates specified in the Schedule to the Bill, the declarant will be required to invest a sum equal to five per cent. of the amount of the voluntarily disclosed income in notified Government securities.

Clause (4) contains provisions relating to particulars to be furnished in a declaration under clause 3 of the Bill.

Sub-clause (1) provides that the declaration shall be made to the Commissioner of Income-tax and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Central Board of Direct Taxes.

Sub-clause (2) specifies the persons who are competent to sign the declaration under clause 3.

Sub-clause (3) provides that any person who has made a declaration under clause 3 in respect of his income or (as a representative assessee) in respect of the income of any other person will not be entitled to make any other declaration under that clause in respect of his income or, as the case may be, the income of such other person and such other declaration, if made, shall be deemed to be void.

Clause 5 contains provisions relating to the time for payment of income-tax and for investment in notified Government securities.

Sub-clause (1) provides that the income-tax payable in respect of the voluntarily disclosed income shall be paid by the declarant before making the declaration and the declaration shall be accompanied by proof of payment of the tax.

Sub-clause (2) empowers the Commissioner of Income-tax to extend the time for payment of the tax or to allow payment thereof by instalments if he is satisfied that the declarant is unable, for good and sufficient reasons, to pay the full amount of income-tax in respect of the voluntarily disclosed income in accordance with sub-clause (1). It will, however, be obligatory for the declarant to pay at least one-half of the income-tax in respect of the voluntarily disclosed income on or before 31st March, 1976 and the balance, if any, on or before 31st March, 1977. Time for payment of tax will be allowed only if the declarant furnishes adequate security for payment thereof.

Sub-clause (3) provides that security for payment of the unpaid tax shall be in such form and in such manner as the Commissioner of Income-tax may direct.

Sub-clause (4) provides that the investment in notified Government securities referred to in sub-clause (3) of clause 3 shall be made by the declarant within thirty days from the date on which the declaration is made.

Clause 6 provides that the declarant will be liable to pay simple interest at 12 per cent. per annum on the tax remaining unpaid from 1st April, 1976 to the date of payment.

Clause 7 contains provisions for the recovery of income-tax in respect of the voluntarily disclosed income and the amount required to be invested under clause 3.

Sub-clause (1) provides that a declarant who fails to pay the income-tax in respect of the voluntarily disclosed income or to make the investment in notified Government securities within the specified time will be deemed to be in default.

Sub-clause (2) extends certain provisions contained in the Income-tax Act, 1961 for levy of penalty for default in payment of tax and for recovery of tax, etc., payable under that Act for the purposes of recovery of tax, penalty and interest payable under the Bill.

Sub-clause (3) provides that any arrears in respect of the amount required to be invested in notified Government securities will be recoverable in accordance with the provisions of sub-clause (2) as if such arrears were arrears of income-tax. The amount so recovered will be utilised for the purchase of the notified Government securities in the name of the declarant.

Clause 8 provides that the voluntarily disclosed income will not be included in the total income of the declarant for any assessment year under the Indian Income-tax Act, 1922, the Income-tax Act, 1961, the Excess Profits Tax Act, 1940, the Business Profits Tax Act, 1947, the Super Profits Tax Act, 1963 or the Companies (Profits) Surtax Act, 1964, if certain conditions specified in this behalf are fulfilled. These conditions are that (i) the declarant credits the amount of the voluntarily disclosed income in the books of account, if any, maintained by him or in any other record and intimates the credit so made to the Income-tax Officer; (ii) the income-tax in respect of the voluntarily disclosed income is paid by the declarant; and (iii) the amount required to be invested in notified Government securities is invested by the declarant. It is further provided that the Commissioner of Income-tax shall, on an application made by the declarant, grant a certificate to him setting forth the particulars of the voluntarily disclosed income, the amount of income-tax paid in respect of the same, the amount of investment made in notified Government securities and the date of payment and investment.

Clause 9 provides that a declaration under clause 3 will not affect the finality of completed assessments and the declarant will not be entitled to claim any set off or relief in respect of the voluntarily disclosed income in any appeal, reference or other proceeding.

Clause 10 provides that the income-tax paid in respect of the voluntarily disclosed income shall not be refundable under any circumstances.

Clause 11 provides that, notwithstanding anything contained in any other law for the time being in force, nothing contained in any declaration made under clause 3 shall be admissible in evidence against the declarant for the purposes of any proceeding relating to imposition of penalty or for the purposes of prosecution under any of the Acts mentioned in sub-clause (1) of clause 8 of the Bill or the Wealth-tax Act, 1957.

Clause 12 provides for the secrecy of declaration.

Sub-clause (1) provides that all particulars contained in a declaration under clause 3 shall be treated as confidential and no court or any other authority shall be entitled to require any public servant or the declarant to produce before it any such declaration or any part thereof or to give any evidence before it in respect thereof.

Sub-clause (2) provides that no public servant shall disclose any particulars contained in such a declaration except to any officer employed in the execution of the Acts mentioned in sub-clause (1) of clause 8 or the Wealth-tax Act, or to any officer appointed by the Comptroller and Auditor-General of India or the Central Board of Direct Taxes to audit income-tax receipts or refunds.

Sub-clause (3) applies the aforesaid provisions in relation to all documents and particulars relating to the investment in notified Government securities.

Clause 13 provides for exemption from wealth-tax in respect of assets specified in a declaration under clause 3.

Sub-clause (1) provides that where the voluntarily disclosed income is represented by cash (including bank deposits), bullion, investment in shares, debts due from other persons, commodities or any other assets specified in the declaration under clause 3 of the Bill (a) in respect of which the declarant has failed to furnish a return under the Wealth-tax Act for any assessment year up to and including the assessment year 1975-76; or (b) which have not been shown in the return of net wealth furnished by him for the said year or years, then, notwithstanding anything contained in the Wealth-tax Act or any rules made thereunder, no wealth-tax shall be payable by the declarant in respect of such assets and they shall not be included in his net wealth for the said assessment year or years. Where the voluntarily disclosed income is represented by assets which have been understated in value in the return of net wealth furnished by the declarant for the said year or years, the amount of the understatement, to the extent the voluntarily disclosed income has been utilised for acquiring such assets, will not be included in the net wealth of the declarant for the said assessment year or years. The *Explanation* to this sub-clause provides that where a declaration under clause 3 is made by a firm, the assets or, as the case may be, the amount referred to above will not be taken into account in computing the net wealth of any partner of the firm or, as the case may be, in determining the value of the interest of any partner in the firm.

Sub-clause (2) provides that the benefit conferred by sub-clause (1) shall not apply unless the conditions specified in sub-clause (1) of clause 8 are fulfilled by the declarant.

Clause 14 contains provisions for disclosure of income in cases of search and seizure.

Sub-clause (1) provides that where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to a person have been seized as a result of a search under the Income-tax Act, 1961 or the Wealth-tax Act, 1957, such person may make a declaration on or after the 8th October, 1975 but before the 1st January, 1976 in respect of any income relating to the previous year in which such search was made or any earlier previous year (a) for which he has failed to furnish a return under section 139 of the Income-tax Act, 1961, or (b) which he has failed to disclose in a return of income furnished by him under that Act before the 8th October, 1975; or (c) which has escaped assessment by reason of his omission or failure to make a return under the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 or to disclose fully and truly all material facts necessary for his assessment or otherwise. The income so declared or, as the case may be, the value of the assets representing such income will not be taken into account for the purposes of (i) payment of interest by the declarant under section

139(8) of the Income-tax Act, 1961 for delay or default in furnishing the return of income; (ii) payment of interest by the declarant under section 215 or section 217 of the said Act or the corresponding provisions of the Indian Income-tax Act, 1922; (iii) imposition of penalty on the declarant under either of the said Acts (except penalty for default in payment of tax, etc.); and (iv) prosecution of the declarant under either of the said Acts.

Sub-clause (2) provides that the declaration under sub-clause (1) shall be made to the Commissioner of Income-tax and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Central Board of Direct Taxes.

Sub-clause (3) specifies the persons who are competent to sign a declaration under this clause.

Sub-clause (4) provides that a copy of the declaration shall be forwarded by the Commissioner of Income-tax to the Income-tax Officer and the information contained therein may be taken into account for the purposes of the assessment of the declarant under the Acts mentioned in sub-clause (1) of clause 8 or the Wealth-tax Act, 1957.

Sub-clause (5) provides that the immunity conferred by sub-clause (1) shall not be available unless the tax chargeable in respect of the income of the previous year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of clause 5. The *Explanation* specifies the manner in which the tax chargeable in respect of the income of any previous year for which the declaration is made is to be calculated.

Sub-clause (6) provides that where any tax is paid by any declarant in respect of the income declared under this clause, credit therefor shall be given to the declarant in the regular assessment made by the Income-tax Officer in respect of his total income of the relevant previous year or years.

Sub-clause (7) provides that the immunity conferred by sub-clause (1) shall not apply in relation to any income which has been included in the total income of the declarant in any assessment made by the Income-tax Officer before the date on which the declaration under this clause is made.

Clause 15 contains provisions for voluntary disclosure of wealth.

Sub-clause (1) provides that any person may make a declaration on or after the 8th October, 1975 but before the 1st January, 1976 in respect of net wealth chargeable to wealth-tax for any assessment year for which he has failed to furnish a return under the Wealth-tax Act; or (b) the value of the assets which has not been disclosed, or the value of the assets which has been understand, in any return of net wealth for any assessment year. Where such a declaration is made, the net wealth or, as the case may be, the value so declared shall not be taken into account for the purposes of any proceedings relating to imposition of penalty

on the declarant or for the purposes of his prosecution under the wealth-tax Act. It will, however, not be permissible for a person to make a declaration in relation to the net wealth assessable for any assessment year for which a notice for furnishing the return has been served upon the declarant before the 8th October, 1975. It will also not be permissible to make a declaration in relation to so much of the value of such assets as has been assessed in any assessment for the relevant assessment year made by the Wealth-tax Officer before the date on which the declaration is made.

Sub-clause (2) provides that the declaration under this clause shall be made to the Commissioner of Income-tax and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Central Board of Direct Taxes.

Sub-clause (3) specifies the persons who are competent to sign a declaration under this clause.

Sub-clause (4) provides that a copy of the declaration shall be forwarded by the Commissioner of Income-tax to the Wealth-tax Officer and the information contained therein may be taken into account for the purposes of the assessment of the net wealth of the declarant under the Wealth-tax Act.

Sub-clause (5) provides that the immunity conferred by sub-clause (1) shall not be available to the declarant unless the wealth-tax chargeable in respect of the net wealth for the assessment year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of clause 5 and the declarant invests, within thirty days of the date on which the declaration is made, the sum specified in sub-clause (6) in notified Government securities. The *Explanation* to this sub-clause specifies the manner in which the wealth-tax chargeable in respect of the net wealth for any assessment year for which the declaration is made is to be calculated.

Sub-clause (6) specifies the sum to be invested in notified Government securities. It provides that where the declaration is made in respect of one assessment year, the amount required to be invested shall be a sum equal to 2½ per cent. of the amount of the net wealth or, as the case may be, the value of assets declared in the declaration made under sub-clause (1). Where the declaration has been made in respect of more than one assessment year, the amount to be invested in such securities shall be a sum equal to 2½ per cent. of the net wealth or, as the case may be, the value of the assets so declared in respect of the last of such assessment years.

Sub-clause (7) provides that where any wealth-tax is paid by the declarant for any assessment year in accordance with the provisions of the Bill, credit therefor shall be given to the declarant in the assessment made under the Wealth-tax Act, 1957 for that year.

Clause 16 contains provisions for immunity from penalty, prosecution, etc., under certain Acts in the case of a person making a declaration under clause 3 and clause 15 of the Bill.

Sub-clause (1) provides that where the voluntarily disclosed income declared under clause 3 or the net wealth or the assets the value whereof is declared under sub-clause (1) of clause 15 is represented by gold, then, notwithstanding anything contained in the Customs Act, 1962 or the Gold (Control) Act, 1968, such gold shall not be liable to confiscation under either of the said Acts and the person making the declaration shall not be liable to imposition of any penalty or infliction of any punishment under either of the said Acts for any act or omission in relation to such gold. The immunity under this clause will be available only if the declarant fulfils the conditions specified in this behalf in sub-clause (1)(A) or, as the case may be, sub-clause (1) (B).

Sub-clause (2) *and sub-clause* (3) contain provisions which are ancillary to the provisions contained in sub-clause (1).

Sub-clause (4) provides that the immunity conferred under sub-clause (1) shall, in a case where the person making the declaration is a firm, also extend to the partners of the firm.

Sub-clause (5) provides that the immunity conferred by sub-clause (1) shall not apply in relation to any gold (a) which has been seized or confiscated under the Customs Act, 1962 or the Gold (Control) Act, 1968 before the declaration is made under clause 3 or, as the case may be, clause 15 of the Bill; or (b) which is seized as a result of any search made under either of the said Acts in cases where such search has commenced before such declaration is made; or (c) in respect of which any other proceedings under either of the said Acts are pending before any authority prior to the date of the declaration.

Sub-clause (6) clarifies that nothing in this clause shall be construed as exempting any person from discharging any obligation under the Gold (Control) Act, 1968 on or after 1st February, 1976 in relation to the gold specified in the declaration.

Clause 17 applies the provisions of Chapter XV of the Income-tax Act relating to liability in special cases and section 189 of the Income-tax Act relating to a firm which has been dissolved or the business or profession of which has been discontinued and the provisions of Chapter V of the Wealth-tax Act, relating to liability to assessment in special cases, to proceedings under the Bill.

Clause 18 clarifies that, except as otherwise expressly provided in the *Explanation* to sub-clause (1) of clause 13 and in sub-clause (4) of clause 16, nothing contained in the Bill shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration.

Clause 19 empowers the Central Government to pass any order, not inconsistent with the provisions of the Bill, for removing any difficulty which may arise in giving effect to its provisions.

Clause 20 empowers the Central Board of Direct Taxes to make rules for carring out the provisions of the Bill.

Clause 21 provides that the provisions of the Bill shall not apply to any person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and such order of detention has not been revoked or set aside.

Clause 22 contains provisions for repeal and savings.

The Schedule to the Bill specifies the rate or rates of income-tax applicable in respect of the voluntarily disclosed income.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill empowers the Central Board of Direct Taxes to make rules to carry out the provisions of the Bill. The matters in respect of which rules may be made relate to prescribing the form in which a declaration may be made under clauses 3, 14 and 15 and the manner in which it may be verified. The matters in respect of which provision may be made in the rules are matters of procedure or detail.

The delegation of legislative power is, therefore, of a normal character.

Memorandum regarding modifications contained in the Voluntary Disclosure of Income and Wealth Bill, 1976 which seeks to repeal and replace the Voluntary Disclosure of Income and Wealth Ordinance, 1975, as amended by the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975.

The Voluntary Disclosure of Income and Wealth Bill, 1976, seeks to repeal and replace the Voluntary Disclosure of Income and Wealth Ordinance, 1975, as amended by the Voluntary Disclosure of Income and Wealth (Amendment) Ordinance, 1975. The Bill closely follows the Ordinance with slight modifications (leaving aside the modifications which are of a drafting nature) whch are explained below.

Clause 17...Clause 17 of the Bill (which corresponds to section 16 of the Ordinance) provides for applying the provisions of Chapter XV of the Income-tax Act, 1961 relating to liability in special cases or of Chapter V of the Wealth-tax Act, 1957, relating to liability to assessment in special cases, in relation to proceedings under the Bill. This caluse has been amplified so as to make the provisions of section 189 of the Income-tax Act (relating to liability of firms which have been dissolved or the business or profession carried on by which has been discontinued) also applicable in relation to proceedings under the Bill. This has been done to make the position clear.

Clause 20...Clause 20 of the Bill (which corresponds to section 19 of the Ordinance) empowers the Central Board of Direct Taxes to make rules to carry out the provisions of the Bill. Sub-clause (2) has been added to the clause to set out in detail the matters in respect of which rules may be made. This is only in conformity with the recommendations of the Committee on Subordinate Legislation.

BILL NO. 13 OF 1976

A Bill to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto.

WHEREAS for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains;

AND WHEREAS such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner;

AND WHEREAS such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants;

BE it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 5th day of November, 1975.

Appli-cation.

2. (*1*) The provisions of this Act shall apply only to the persons specified in sub-section (*2*).

(*2*) The persons referred to in sub-section (*1*) are the following, namely:—

(*a*) every person—

(*i*) who has been convicted under the Sea Customs Act, 1878, or the Customs Act, 1962, of an offence in relation to goods of a value exceeding one lakh of rupees; or 8 of 1878. 52 of 1962.

(*ii*) who has been convicted under the Foreign Exchange Regulation Act, 1947, or the Foreign Exchange Regulation Act, 1973, of an offence, the amount or value involved in which exceeds one lakh of rupees; or 7 of 1947. 46 of 1973.

(*iii*) who having been convicted under the Sea Customs Act, 1878, or the Customs Act, 1962, has been convicted subsequently under either of those Acts; or 8 of 1878. 52 of 1962.

(*iv*) who having been convicted under the Foreign Exchange Regulation Act, 1947, or the Foreign Exchange Regulation Act, 1973, has been convicted subsequently under either of those Acts; 7 of 1947. 46 of 1973.

(*b*) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974: 52 of 1974.

Provided that—

(*i*) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has not been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(*ii*) such order of detention, being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under sub-section (*3*) of section 9, or on the report of the Advisory Board under section 8, read with sub-section (*2*) of section 9, of the said Act; or

(*iii*) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (*3*) of that section, or on the basis of the report of the Advisory Board under section 8, read with sub-section (*6*) of section 12A, of that Act; or

(*iv*) such order of detention has not been set aside by a court of competent jurisdiction;

(*c*) every person who is a relative of a person referred to in clause (*a*) or clause (*b*);

(*d*) every associate of a person referred to in clause (*a*) or clause (*b*);

(*e*) any holder (hereafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (*a*) or clause (*b*) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.

Explanation 1.—For the purposes of sub-clause (*i*) of clause (*a*), the value of any goods in relation to which a person has been convicted of an offence shall be the wholesale price of the goods in the ordinary course of trade in India as on the date of the commission of the offence.

Explanation 2.—For the purposes of clause (c), "relative", in relation to a person, means—

(*i*) spouse of the person;

(*ii*) brother or sister of the person;

(*iii*) brother or sister of the spouse of the person;

(*iv*) any lineal ascendant or descendant of the person;

(*v*) any lineal ascendant or descendant of the spouse of the person;

(*vi*) spouse of a person referred to in clause (*ii*), clause (*iii*), clause (*iv*) or clause (*v*);

(*vii*) any lineal descendant of a person referred to in clause (*ii*) or clause (*iii*).

Explanation 3.—For the purposes of clause (*d*), "associate", in relation to a person, means—

(*i*) any individual who had been or is residing in the residential premises (including outhouses) of such person;

(*ii*) any individual who had been or is managing the affairs or keeping the accounts of such person;

(*iii*) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Companies Act, 1956, of which such person had been or is a member, partner or director;

1 of 1956.

(*iv*) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in clause (*iii*) at any time when such person had been or is a member, partner or director of such association, body, partnership firm or private company;

(*v*) any person who had been or is managing the affairs, or keeping the accounts, of any association of persons, body of individuals, partnership firm or private company referred to in clause (*iii*);

(*vi*) the trustee of any trust, where,—

(*a*) the trust has been created by such person; or

(*b*) the value of the assets contributed by such person (including the value of the assets, if any, contributed by him earlier) to the trust amounts, on the date on which the contribution is made, to not less than twenty per cent. of the value of the assets of the trust on that date;

(*vii*) where the competent authority, for reasons to be recorded in writing, considers that any properties of such person are held on his behalf by any other person, such other person.

Explanation 4.—For the avoidance of doubt, it is hereby provided that the question whether any person is a person to whom the provisions of this Act apply may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the commencement of this Act.

Definitions.

3. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "Appellate Tribunal" means the Appellate Tribunal for Forfeited Property constituted under section 12;

(*b*) "competent authority" means an officer of the Central Government authorised by it under sub-section (*1*) of section 5 to perform the functions of a competent authority under this Act;

(*c*) "illegally acquired property", in relation to any person to whom this Act applies, means—

(*i*) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(*ii*) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(*iii*) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(*iv*) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (*i*) to (*iii*) or the income or earnings from such property;

and includes—

(*A*) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who

held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(*B*) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (*A*), or the income or earnings therefrom;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "property" includes any interest in property, movable or immovable;

(*f*) "trust" includes any other legal obligation.

(*2*) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

(*3*) Any reference in this Act to any officer or authority shall, in relation to any area in which there is no officer or authority with the same designation, be construed as a reference to such officer or authority as may be specified by the Central Government by notification in the Official Gazette.

Prohibition of holding illegally acquired property.

4. (*1*) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(*2*) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (*1*), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.

Competent authority.

5. (*1*) The Central Government may, by order published in the Official Gazette, authorise as many officers of the Central Government (not below the rank of a Joint Secretary to the Government), as it thinks fit, to perform the functions of the competent authority under this Act.

(*2*) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

Notice of forfeiture.

6. (*1*) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which

he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(*2*) Where a notice under sub-section (*1*) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

Forfeiture of property in certain cases.

7. (*1*) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(*2*) Where the competent authority is satisfied that some of the properties referred to in the show-cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (*1*).

(*3*) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(*4*) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956, or the articles of association of the company, forthwith register the Central Government as the transferee of such shares. 1 of 1956.

Burden of proof.

8. In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected.

Fine in lieu of forfeiture.

9. (*1*) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.

Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be,—

(*a*) in the case of any part of income or earnings, the amount of such part of income or earnings;

(*b*) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

Procedure in relation to certain trust properties.

10. In the case of any person referred to in clause (*vi*) of *Explanation* 3 to sub-section (2) of section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 6 and all the other provisions of this Act shall apply accordingly.

Explanation.—For the purposes of this section "illegally acquired property", in relation to any property held in trust, includes—

(*i*) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;

(*ii*) any property acquired by the trust out of any contributions made by any person which would have been illegally acquired property in relation to such person had such person acquired such property out of such contributions.

Certain transfers to be null and void.

11. Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.

Constitution of Appellate Tribunal.

12. (*1*) **The Central Government may, by notification in the Official Gazette, constitute an Appellate Tribunal to be called the Appellate Tribunal for Forfeited Property consisting of a Chairman and such number of other members (being officers of the Central Government not below the rank of a Joint Secretary to the Government) as the Central Government thinks fit, to be appointed by that Government for hearing appeals against the orders made under section 7, sub-section (*1*) of section 9 or section 10.**

(2) The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

(3) The terms and conditions of service of the Chairman and other members shall be such as may be prescribed.

(4) Any person aggrieved by an order of the competent authority made under section 7, sub-section (1) of section 9 or section 10, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain any appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) On receipt of an appeal under sub-section (4), the Appellate Tribunal may, after giving an opportunity to the appellant to be heard, if he so desires, and after making such further enquiry as it deems fit, confirm, modify or set aside the order appealed against.

(6) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches consisting of three members and constituted by the Chairman of the Appellate Tribunal.

(7) The Appellate Tribunal may regulate its own procedure.

Notice or order not to be invalid for error in description.

13. No notice issued or served, no declaration made, and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein if such property or person is identifiable from the description so mentioned.

Bar of jurisdiction.

14. No order passed or declaration made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Tribunal or any competent authority is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Competent authority and Appellate Tribunal to have powers of civil court.

15. The competent authority and the Appellate Tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for examination of witnesses or documents;

(f) any other matter which may be prescribed.

Information to competent authority.

16. (1) Notwithstanding anything contained in any other law, the competent authority shall have power to require any officer or authority of the Central Government or a State Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the competent authority will be useful for, or relevant to, the purposes of this Act.

(2) Any officer of the Income-tax Department, the Customs Department or the Central Excise Department or any officer of enforcement
46 of 1973. appointed under the Foreign Exchange Regulation Act, 1973, may furnish *suo motu* any information available with him to the competent authority if in the opinion of the officer such information will be useful to the competent authority for the purposes of this Act.

Certain officers to assist competent authority and Appellate Tribunal.

17. For the purposes of any proceedings under this Act, the following officers are hereby empowered and required to assist the competent authority and the Appellate Tribunal, namely:—

(*a*) officers of the Customs Department;

(*b*) officers of the Central Excise Department;

(*c*) officers of the Income-tax Department;

(*d*) officers of enforcement appointed under the Foreign Ex-
46 of 1973. change Regulation Act, 1973;

(*e*) officers of police;

(*f*) such other officers of the Central or State Government as are specified by the Central Government in this behalf by notification in the Official Gazette.

Power of competent authority to require certain officers to exercise certain powers.

18. (*1*) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (*1*), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (*2*), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him
43 of 1961. for any purpose under the Income-tax Act, 1961, and the provisions of the said Act shall, so far as may be, apply accordingly.

Power to take possession.

19. (*1*) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (*1*) of section 9 within the time allowed therefor under sub-section (*3*) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (*1*), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition.

Rectification of mistakes.

20. With a view to rectifying any mistakes apparent from record, the competent authority or the Appellate Tribunal, as the case may be, may amend any order made by it within a period of one year from the date of the order:

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard.

Findings under other laws not conclusive for proceedings under this Act.

21. No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act.

Service of notices and orders.

22. Any notice or order issued or made under this Act shall be served—

(a) by tendering the notice or order or sending it by registered post to the person for whom it is intended or to his agent;

(b) if the notice or order cannot be served in the manner provided in clause (a), by affixing it on a conspicuous place in the property in relation to which the notice or order is issued or made, or on some conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or personally worked for gain.

Protection of action taken in good faith.

23. No suit, prosecution or other proceeding shall lie against the Central Government or any officer of the Central or State Government for anything which is done, or intended to be done, in good faith, in pursuance of this Act or the rules made thereunder.

Act to have overriding effect.

24. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Provisions of the Act not to apply to certain properties held in trust.

25. Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes if—

(i) such property has been so held by such trust or institution from a date prior to the commencement of this Act; or

(ii) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

Power to make rules.

26. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the terms and conditions of service of the Chairman and other members of the Appellate Tribunal under sub-section (*3*) of section 12;

(*b*) the powers of a civil court that may be exercised by the competent authority and the Appellate Tribunal under clause (*f*) of section 15;

(*c*) any other matter which has to be, or may be, prescribed.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and saving.

27. (*1*) The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975, is hereby repealed. 20 of 1975.

(*2*) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Smuggling activities and foreign exchange manipulations are having a deleterious effect on the national economy. Persons engaged in such malpractices have been augmenting their ill-gotten gains by violation of laws relating to income-tax, wealth-tax or of other laws. In many cases, such persons have been holding properties acquired through ill-gotten gains in the names of their relatives, associates and confidants. This accumulation of ill-gotten wealth gives increasing power, influence and resources to those who carry on such clandestine activities and even tend to confer social status and prestige which is quite contrary to the healthy socio-cultural norms. These activities pose a serious threat to the economy and the security of the nation. In conjunction with various other steps taken by the Government in recent months for cleansing the social fabric and resuscitating the national economy, it became necessary to assume powers to deprive such persons of their illegally acquired properties so as to effectively prevent the smuggling and other clandestine operations. The President promulgated on the 5th November, 1975, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975.

2. The present Bill seeks to replace the aforesaid Ordinance.

3. The Notes on Clauses appended to the Bill explain in detail the various provisions thereof.

The 30th December, 1975. PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Extract from letter No. F. 1(9)/75-IC, dated the 3rd January, 1976 from Shri Pranab Kumar Mukherjee, Minister of State in charge of the Department of Revenue and Banking to the Secretary-General, Lok Sabha.]

* * * *

The President having been informed of the subject-matter of the proposed Bill, has recommended under clause (3) of article 117 of the Constitution the consideration by Lok Sabha of the Bill.

Notes on clauses

Clause 2 lays down that the provisions of this Bill shall apply only to the following persons:—

(i) every person who has been convicted under the Sea Customs Act, 1878 or the Customs Act, 1962, of an offence in relation to goods the value of which exceeds rupees one lakh;

(ii) every person who has been convicted under the Foreign Exchange Regulation Act, 1947, or the Foreign Exchange Regulation Act, 1973, of an offence the amount or value involved in which exceeds rupees one lakh;

(iii) every person who having been convicted under the Sea Customs Act, 1878 or the Customs Act, 1962 has been convicted again under either of the said Acts;

(iv) every person who having been convicted under the Foreign Exchange Regulation Act, 1947 or the Foreign Exchange Regulation Act, 1973 has been convicted again under either of the said Acts;

(v) every person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, provided that such an order of detention has not been revoked or set aside under any of the circumstances specified in the proviso to sub-clause 2(b);

(vi) every person who is a relative of a person referred to in items (i) to (v) above, within the meaning of the term 'relative' as defined in Explanation 2 to sub-clause (2); and

(vii) every associate of a person referred to in items (i) to (v) above within the meaning of the term 'associate' as defined in Explanation 3 to sub-clause (2).

For the avoidance of doubts, it has been clarified that the question whether the provisions of this Bill apply to any person may be determined with reference to any facts, circumstances or events (including any conviction or detention) which occurred or took place before the 5th November, 1975, *i.e.*, the date on which the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 was promulgated.

Clause 3 contains definitions of some of the terms and expressions used in the Bill. It provides, *inter alia*, that the expression 'illegally acquired property' in relation to any person to whom the provisions of this Bill will apply, means any property which is acquired wholly or partly, whether before or after the 5th November, 1975, out of income, earnings or assets obtained from any activity prohibited by or under any law

relating to any matter within the legislative competence of the Parliament, or out of income, earnings or assets in respect of which any such law has been contravened, or out of income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to anything done in respect of any matter beyond the legislative competence of the Parliament. It includes any property acquired which is wholly or partly traceable to any property referred to above or out of income or earnings from any such property.

The expression 'illegally acquired property' also includes property of the type referred to above held by any other person as a transferee except in a case where the transfer is made in good faith and for adequate consideration. It further includes any property acquired by such person, whether before or after the 5th November, 1975, by any means wholly or partly traceable to any property so held by the transferee, or the income or earnings therefrom.

It is further provided that, in relation to any area in which any law referred to in this Bill is not in force, any such reference to such law shall be construed as a reference to the corresponding law, if any, in force in that area. Similarly, any reference in this Bill to any officer or authority, in relation to any area in which there is no officer or authority with the same designation shall be construed as a reference to such officer or authority as may be notified by the Central Government in the Official Gazette.

Clause 4 provides that from the 5th November, 1975, it will be unlawful for any person to whom this Bill applies to hold any illegally acquired property either by himself or through any other person on his behalf and such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Bill.

Clause 5 empowers the Central Government to authorise, by publication in the Official Gazette, as many of its officers as it thinks fit to perform the functions of the competent authority under this enactment. No officer below the rank of Joint Secretary to the Government can, however, be authorised to function as a competent authority. The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may direct.

Clause 6 provides that if, having regard to the value of properties held by a person, his known sources of income, earnings or assets and any other material before it, the competent authority has reason to believe that any property is illegally acquired property, it may issue a notice to the person affected to show cause why such property should not be declared as illegally acquired property and forfeited to the Central Government. The time given to the person affected for compliance with the notice shall not ordinarily be less than thirty days. Where the notice is issued to a person in respect of property held on his behalf by any other person, a copy of the notice shall be served on such other person also.

Clause 7 provides that after considering the objections, if any, to the show cause notice taken by the person affected and after considering the materials before it and after giving the persons concerned a reasonable

opportunity of being heard, the competent authority shall record a finding whether or not the property is illegally acquired property. Where the property is held to be illegally acquired, it shall stand forfeited to the Central Government. Where any shares in a company are so forfeited, the company shall forthwith register the Central Government as the transferee of such shares notwithstanding anything contained in the Companies Act or the articles of Association of the company.

Clause 8 lays down that in any proceedings under this enactment the burden of proving that any property is not illegally acquired will be on the person affected.

Clause 9 provides that where the source of only less than half of the investment is not proved, an option shall be given to the affected person to pay a fine in lieu of confiscation. Such fine shall be equal to one and one-fifth times the value of the unproved investment.

Clause 10 provides that where a trust has been created by a person to whom this Bill applies, or where the value of an asset contributed to a trust by a person to whom this Bill applies amounts to not less than 20 per cent. of the value of the assets of the trust on the date the contribution is made, and the competent authority has reason to believe that any property held by such a trust is illegally acquired property, it may serve a notice upon the author of the trust or the contributor of such assets, and the trustees, calling upon them to explain the source of the acquisition of the property or of the contribution to the trust for such acquisition. Such notice shall be treated as a notice under clause 6 and the provisions of this Bill shall apply accordingly.

Clause 11 lays down that where any property referred to in a notice under clause 6 or clause 10 is transferred after the issue of such notice, such transfer shall be ignored for the purposes of this Bill and if such property is subsequently forfeited to the Central Government, the transfer in question shall be deemed to be null and void.

Clause 12 provides for constitution of an Appellate Tribunal for Forfeited Property and lays down the procedure of appeals to it. The Chairman of the Appellate Tribunal shall be a person who is or has been or is qualified to be a Judge of the Supreme Court or of a High Court.

Clause 13 lays down that no notice issued or order passed under this Bill shall be deemed to be valid by reason of any error in the description of the property or person mentioned in it if the property or person is identifiable from the description.

Clause 14 bars the jurisdiction of courts in respect of any matter which the Appellate Tribunal or any competent authority is empowered to determine under this Bill.

Clause 15 provides that the competent authority and the Appellate Tribunal shall have all the powers of a civil court for the purposes of summoning witnesses and recording evidence, etc.

Clause 16 enables the competent authority to require any officer or authority of the Central Government or State Government or a local

authority to furnish such information as will be useful for the purpose of this enactment in the opinion of the competent authority. It also enables officers of the Income-tax Department, Customs Department, Central Excise Department and the officers of enforcement appointed under the Foreign Exchange Regulation Act, 1973 to furnish *suo motu* any useful information to the competent authority.

Clause 17 empowers and requires officers of certain specified categories to assist the competent authority and the Appellate Tribunal.

Clause 18 empowers the competent authority to require an officer of the Income-tax Department to conduct or cause to be conducted any enquiry, investigation or survey in respect of any person, property, documents, etc., for the purpose of any proceedings under this enactment or for initiating any such proceedings. The officer in question shall have, for the purpose of such enquiry, investigation or survey, all the powers which may be exercised by him under the Income-tax Act, 1961.

Clause 19 makes necessary provision for enabling the competent authority to take possession of any property which has been declared to be forfeited to the Central Government under this Bill.

Clause 20 provides for rectification of mistakes apparent from record by the competent authority and the Appellate Tribunal.

Clause 21 lays down that no finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Bill.

Clause 22 specifies the manner in which the notices and orders under this Bill shall be served.

Clause 23 provides for protection of any action taken in good faith under this Bill.

Clause 24 lays down that the provisions of this Bill shall have effect notwithstanding anything inconsistent therewith contained in any other law.

Clause 25 lays down that the provisions of this Bill shall not apply to any property held by a trust or institution created or established wholly for public religious or charitable purposes if such property has been so held by the trust or institution from a date prior to the commencement of this enactment or such property is wholly traceable to any property held by such trust or institution prior to such commencement.

Clause 26 enables the Central Government to make rules for carrying out the purposes of this Bill.

Clause 27 seeks to repeal the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975 and provides that notwithstanding such repeal any action taken under the Ordinance so repealed shall be deemed to have been taken under the corresponding provisions of this Bill.

FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that the Central Government may authorise as many officers of the Central Government (not below the rank of a Joint Secretary to the Government) as it thinks fit, to perform the functions of the competent authority under the Bill. The competent authority is empowered to issue notice of forfeiture and initiate proceedings for confiscation, to obtain information for that purpose from officers of the Central Government or the State Government or a local authority, to conduct or cause to be conducted survey, enquiry or investigation wherever necessary and to pass the final order on the basis of the material available before it after giving formal hearing to the persons concerned. The order of the competent authority may be appealed against before the Appellate Tribunal presided over by a person who is, or has been, or is qualified to be, a Judge of the Supreme Court or of a High Court. Considering the nature and quantum of the work involved it is envisaged that it will be necessary to appoint three officers of the rank of Joint Secretaries as competent authorities. Each competent authority will have to be assisted by one Deputy Secretary, one Under Secretary and four Inspecting Officers. The expenditure on this account together with that on the Complementary staff and incidental expenses of administration is estimated at rupees nine lakhs and forty-one thousand per annum.

2. Clause 12 of the Bill provides for setting up of an Appellate Tribunal for hearing appeals against the orders passed by the competent authority. The Chairman of the Tribunal is to be a person, who is, or has been, or is qualified to be, a Judge of the Supreme Court or of a High Court. The Central Government is required to appoint such number of other members as it thinks fit. Considering that the members will have to sit in judgment over decisions of officers of the rank of Joint Secretaries, they will have to be of the status of Additional Secretaries. It is envisaged that, in addition to the Chairman, initially to such members will be needed. The Tribunal will have to be assisted by a Registrar of the rank of a senior class I officer. The expenditure on this account, together with that on the complementary staff and the incidental expenses is estimated at rupees three lakhs and thirty-five thousand per annum.

3. The provisions of the Bill will throw up a large amount of work at the headquarters level. Besides performing some of the statutory functions which are cast on the Central Government, it would be necessary for the headquarters' set-up to decide policy matters, formulate guidelines for the competent authorities and the field formulations of various departments concerned, exercise control and supervision over their work, maintain liaison with other ministries and departments of the Government and frame rules relating to several matters covered by the provisions of the Bill. Considering the nature and magnitude of the work involved and the circumspection and expedition with which it will have to be executed, it is envisaged that it will be necessary to have a post of

an officer of the status of Additional Secretary in the Department of Revenue and Banking to be in charge of the work relating to forfeiture of illegally acquired properties. The Additional Secretary will have to be provided with one Deputy Secretary, one Under Secretary and other requisite supporting staff. The expenditure on this account, including that on the complementary staff and the incidental expenses of administration is estimated at rupees two lakhs and twenty thousand per annum.

4. Taking the three amounts mentioned in paras 1 to 3 above, it is expected that an amount of rupees fourteen lakhs and ninety-six thousand will be the recurring expenditure.

5. For the purpose of purchasing necessary furniture and other equipments, it is estimated that there would be a non-recurring expenditure of rupees one lakh and fifty thousand.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 12 seeks to empower the Central Government to determine the terms and conditions of service of the Chairman and other members of the Appellate Tribunal. Clause 15 enumerates the powers of a Civil Court that are exercisable by the competent authority or Appellate Tribunal. Sub-clause (j) thereof empowers the Central Government to make rules specifying other matters in respect of which the powers of Civil Court could be so exercised. The general rule-making power to carry out the provisions of this Act is conferred under sub-clause (1) of clause 26.

2. The matters with regard to which the Central Government is proposed to be empowered to make rules are matters of detail and the delegation of legislative power is of a normal character.

Memorandum explaining the modifications contained in the Bill to replace the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975

The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Bill, 1976, which seeks to repeal and replace the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinance, 1975, purposes to make the following modifications, apart from modifications of a consequential or drafting nature, in the provisions contained in the said Ordinance:—

(i) Clause (vi) of Explanation 3 to section 2 of the Ordinance defines an 'associate', in relation to a person, to include the trustees of certain trusts, of which such person is either the author or a substantial contributor. This definition is applicable only to trusts created before the commencement of the Ordinance wholly for public religious or charitable purposes. In the corresponding provision contained in clause (vi) of Explanation 3 to clause 2 of the Bill trustees of all trusts are brought within the scope of the definition, and the Exception contained in the Ordinance is being incorporated in clause 25 of the Bill. Under that clause, the provisions of the Bill shall not apply in relation to any property held by a trust or an institution created or established wholly for public religious or charitable purposes if such property has been held by it from a date prior to 5th November, 1975 or such property is wholly traceable to any property held by it prior to that date.

(ii) Clause 3 of the Bill (which corresponds to section 3 of the Ordinance) contains two new sub-clauses, namely, sub-clause (2) and sub-clause (3). Sub-clause (2) seeks to provide that in relation to any area in which any law referred to in the Bill is not in force, any reference to such law shall be construed as a reference to the corresponding law, if any, in force in that area. Sub-clause (3) seeks to provide that any reference in the Bill to any officer or authority with the same designation shall be construed as a reference to such officer or authority as may be notified by the Central Government in the Official Gazette. These provisions are considered necessary as some of the laws referred to in the Bill do not extend to the entire territory to which the provisions thereof will apply.

(iii) Clause 6 of the Bill (which corresponds to section 6 of the Ordinance) contains a new provision to the effect that where a show-cause notice served on any person under that clause specifies any property which is held on behalf of such person by any other person a copy of the notice shall also be served on such other person, and necessary consequential change has also been made in clause 7 of the Bill.

S. L. SHAKDHER,
Secretary-General.

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